

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

WILLIAM E. DUGAN, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	CIVIL ACTION
	)	
vs.	)	NO. 08 C 1207
	)	
SC EXCAVATING, INC.,	)	JUDGE JAMES B. MORAN
an Indiana corporation,	)	
	)	
Defendant.	)	

**AFFIDAVIT**

STATE OF ILLINOIS     )  
                                  ) SS.  
COUNTY OF COOK     )

DAVID S. BODLEY, being first duly sworn upon his oath, deposes and states:

1. He is now, and has since the first day of May, 1999, been employed by the Trustees of the Midwest Operating Engineers Fringe Benefit Funds as administrative manager, and in such capacity, has personal knowledge of the matters hereinafter set forth and if called as a witness in the instant proceedings is competent to testify in respect thereto.

2. He has read the Complaint filed in this cause, and knows of his own personal knowledge the contents of the collective bargaining agreements and Agreements and Declarations of Trust and all facts alleged therein, and if called and sworn as a witness is competent to testify thereto.

3. He is charged with keeping and maintaining records of contributions received by the Plaintiff Funds, maintains individual records on each person, firm and corporation required to make contributions to said Plaintiff Funds, receives and records contribution reports made by such persons, firms or corporations, and has under his supervision and direction all books, records, documents and papers relating to such Plaintiff Funds.

4. He has examined the account of Defendant in the above-entitled cause, and states that said Defendant:

- (a) is required to make monthly contribution reports under the terms of the aforesaid collective bargaining agreement;
- (b) has submitted monthly contribution reports for the months of November 2007 through January 2008, but has failed to submit the contributions which it acknowledges therein to be due as set forth below:

	<u>Contributions</u>
Welfare Fund	\$ 7,530.90
Pension Fund	\$10,465.76
Apprenticeship Fund	\$ 1,954.35
Vacation Fund	\$ 3,908.70

- (c) has submitted fringe benefit contributions by way of checks which were subsequently dishonored by its bank for non-sufficient funds, causing Plaintiffs to incur bank fees of \$70.00;
- (d) is bound to Agreements and Declarations of Trust, which required it to promptly furnish to the Trustees, on demand, any and all necessary records of dates of birth, Social Security numbers, amount of wages paid and hours worked, and any other payroll records and information, including state and federal employment tax returns that the Trustees may require in connection with the administration of the Trust Fund and for no other purposes. The Trustees or their authorized representatives may examine the payroll books and records, including state and federal employment tax returns of each Employer, whenever such examination is deemed necessary by the Trustees in connection with the proper administration of the Trust Fund;

- (e) has failed to submit its payroll books and records for April 2006 through the present date, despite numerous attempts by the Funds' auditors to conduct an audit of such documents and records;

5. Pursuant to the Trust Agreements he has assessed a liquidated damages surcharge against the Defendant in the amount of ten (10%) percent of all contributions due and unpaid and all contributions which were paid late, for the months of October 2007 through January 2008, in amounts set forth below:

	<u>Liquidated Damages</u>
Welfare Fund	\$2,464.41
Pension Fund	\$2,053.68
Apprenticeship Fund	\$ 284.36
Vacation Fund	\$ 568.71

6. Because of Defendant's failure to submit its payroll books, records and tax documents to an audit, Affiant is unable to determine all amounts, if any, that may be due and owing to Plaintiffs.

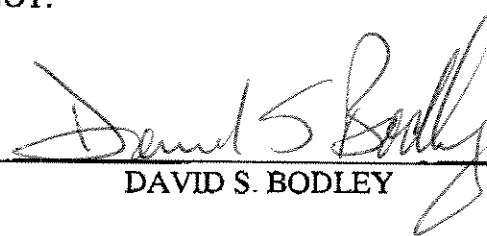
7. That in his capacity as Administrative Manager, he has become familiar with the administration of multi-employer fringe benefit funds, and that the custom and usage in maintaining such funds is to require an audit of the payroll books and records of employers required to file contribution reports, in order to determine contributions due such funds.

8. That absent the performance of an audit as requested, Plaintiffs have no alternative means by which they can determine with the degree of accuracy required of them by law, the actual contributions which Defendant is required to have made to Plaintiffs and which it has failed to make.

9. He is duly authorized by Plaintiffs in this behalf, has personal knowledge of the matters set forth above and if called as a witness in this cause, is competent to testify thereto.

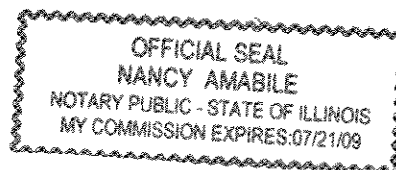
10. He makes this Affidavit in support of the application of Plaintiffs for entry of default and judgment and for an order directing an audit of the Defendant's payroll books and records for April 2006 through the present date and requests this Court to consider the same as proof in support of the allegations contained in the Complaint of the Plaintiffs and such other facts herein set forth.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
DAVID S. BODLEY

SUBSCRIBED AND SWORN  
TO before me this 27th  
day of March, 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC



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**CERTIFICATE OF SERVICE**

The undersigned, an attorney of record, hereby certifies that she electronically filed the foregoing document (Affidavit of David S. Bodley) with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced document by United States Mail to the following non-CM/ECF participant on or before the hour of 5:00 p.m. this 8th day of April 2008:

Mr. Bryan Siewin, Registered Agent  
SC Excavating, Inc.  
622 Versailles Drive  
Valparaiso, IN 46383

/s/ Jennifer L. Dunitz-Geiringer

Jennifer L. Dunitz-Geiringer  
Attorney for Plaintiffs  
BAUM SIGMAN AUERBACH & NEUMAN, LTD.  
200 West Adams Street, Suite 2200  
Chicago, IL 60606-5231  
Bar No.: 6237001  
Telephone: (312) 236-4316  
Facsimile: (312) 236-0241  
E-Mail: [jdunitz.geiringer@baumsigman.com](mailto:jdunitz.geiringer@baumsigman.com)